IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-09-2006

CORAM

THE HON'BLE MR.JUSTICE R.REGUPATHI

Crl.R.C.No.614 of 2006

S.Dhananjeyan ..Petitioner/Petitioner/Complainant

Versus

R.Mohan .. Respondent/Respondent/Accused

Prayer: Petition filed under Section 397 & 401 Cr.P.C to set aside the order of dismissal passed on 03.02.2006 in C.M.P.No.5660 of 2005 by the learned XI Metropolitan Magistrate, Saidapet, Chennai-600 015.

For petitioner : Mr.S.Swamidoss Manoharan
For Respondent : Mr.T.Ramachandran

O R D E R

The petitioner is the complainant in the private complaint. On conclusion of enquiry under Section 202 Cr.P.C, an order has been passed under Section 203 Cr.P.C dismissing the private complaint for an offence punishable under Sections 406 and 420 IPC. Aggrieved against the order impugned, the present revision has been filed before this Hon'ble Court.

2. Learned counsel for the petitioner submits the petitioner has entered into an agreement with the respondent/accused for construction of a marriage hall, wherein, the understanding between the parties are that the petitioner will provide labour and the respondent will provide building materials. On completion of the construction, the profit will be shared by both of them. It is further alleged in the complaint that the work was undertaken and the building was almost completed. At the fag end of the completion, the respondent wanted to bring in some other person as a partner, which was disputed when there was a due of about Rs.8 lakhs from the respondent. Moreover the respondent has taken over the premises, keeping behind the machineries of the petitioner inside, resulting in the filing of the private complaint.

3. Learned Magistrate on receipt of the private complaint ordered investigation under Section 156(3) Cr.P.C. The police after completing the investigation, filed a final report before the learned Magistrate, wherein it has been concluded that there is a dispute between the parties. Since

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no further proceeding was taken up by the learned Magistrate, a subsequent petition has been filed by the petitioner and on which the learned Magistrate, recorded the statement of the petitioner, as well as other witnesses and finally has passed the order impugned, dismissing the private complaint.

4. Learned counsel for the petitioner submits that the learned Magistrate has over reached himself without following the procedure established by law and decided the issue at the initial stage. Learned Magistrate may have to apply the mind, on receipt of the materials at the initial stage under Section 202 Cr.P.C as to whether a prima facie case made out or not. But the discussion in the impugned order is so elaborate, relying on several reported judgments, which is not required under law.

5. In a case reported in Ponnal @ Kalaiyarasi V. Rajamanickam and 11 others (1998(4) crimes 543), it has been held as follows:

> "No doubt, it is true that the complaint filed by a private party can be dismissed by the learned Magistrate under Section 203 cr.P.C, if he thinks that there is no sufficient ground for proceeding. While exercising his discretionary powers, the learned Magistrate should not allow himself to evaluate and appreciate the sworn statements recorded by him under Section 202 Cr.P.C. All that he could do would be, to consider as to whether there is a prima facie case for a criminal offence, which, in his judgment, would be sufficient to call upon the alleged offender to answer. At the stage of Section 202 Cr.P.C enquiry, the standard of proof which is required finally before finding the accused guilty or otherwise should not be applied at the initial stage. This was exactly done by the learned Magistrate in the instant case.
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> 8. The Principles which has to be followed while dealing with the private complaint in accordance with the provisions under Sections 202 and 204 Cr.P.C have been elaborately dealt with by this Court by Honourable Justice Arunachalam (as he then was) in Ashok Kumar V. Mariappan and in A.Chellappa and others V. Kulasekaran and State."

6. In a case reported in Nambi Thevar Vs. State (1999 MLJ 31) it has been held as follows:

> "8. There can be no doubt, that the complaint could be dismissed under Section 203 of the Criminal Procedure Code, if the Magistrate thought that there is no sufficient ground for processing.
>
> 9. The word `sufficient ground' contemplated under Section 204 of the Code of Criminal Procedure, relates to the facts which the complainant placed before the Court of the Magistrate and such facts should show the prima facie case against the accused."

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7. In Mukesh Jain Vs. Balachandar (2005(2) LW Crl. 558) it has been observed as follows:

'The object of the enquiry in Section 202 of Criminal Procedure Code is to ascertain the truth or falsehood of the complaint and the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself and the statements made before him by the complainant and other persons examined by him.

8. In Rashmji Kumar (smt) V. Mahesh Kumar Bhada (1997 Supreme Court Cases (Cri) 415) in the following lines:

> "It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in State of Bihar V. Rajendra Agarwall (1996(8) SCC 164) that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence, and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters."....
>
> "In the case of dismissal of the complaint under Section 203 of Criminal Procedure Code, the person accused of the offence need not be given the right of audience in revision proceedings, challenging the dismissal order. (Somu alias Somasundaram and 3 others V. State and another (1985 L.W (Crl.) 25) and Sivasankar V. Santhakumar (1991(1) MWN (Cr.) 265 Mad).

9. Pending enquiry the accused entered appearance. I have perused the materials available on record and heard the submissions made by both the parties.

10. On a perusal of the order impugned, I find that the learned Magistrate has over-reached and misdirected himself. He has to find out the availability of sufficient materials to substantiate a prima facie case but discussed about the prospects of the case, which is not required under law. It has been repeatedly held by the Supreme Court and this Hon'ble Court that such an exercise is deprecated. The question at the initial stage was not whether there was any truth in the allegation made in the complaint but the question was whether on the basis of the allegations prima facie case and an offence is made out. The truth or otherwise of the allegation made in the complaint would be examined at the time of the trial.

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11. In such circumstances, the impugned order passed by the learned Magistrate deserves to be set aside and the case has to be remitted back. It is at that juncture the learned counsel for the petitioner submits that since the Magistrate who passed the order impugned is still in the same Court, it may not be desirable to remand the case to the same Magistrate. I find that there is some force in the submissions made.

12. In view of the facts and circumstances of the case, the case is remitted to the learned XVII Metropolitan Magistrate, Saidapet, Chennai. The learned Magistrate on appraisal of the materials available on record may come to a conclusion regarding the availability of the materials to substantiate a prima facie case and after reaching a conclusion may proceed with the case in accordance with law. The Registry is directed to send the records forthwith to the learned Metropolitan Magistrate for his disposal.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

1. The XI Metropolitan Magistrate, Saidapet, Chennai - 15.

2.The XVII Metropolitan Magistrate,
Saidapet, Chennai.

3. 1 and 2 Do-Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

4. The Section Officer, Criminal Section,
High Court, Madras
(To send the records forthwith).

1 cc To Mr.S.Swamidoss, Advocate, SR.43896.
1 cc To Mr.T.Ramachandran, Advocate, SR.43903.

Crl.R.C.No.614 of 2006

BV(CO)
RVL 26.10.2006

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